

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION	DOCKET NO. DRU-04-3
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ORDER DECLINING TO ISSUE DECLARATORY ORDER

(Issued October 7, 2004)

On September 8, 2004, Qwest Corporation (Qwest) filed a petition with the Utilities Board (Board) requesting a declaratory order that its tariff supersedes an agreement it has with Iowa Network Services, Inc. (INS). Specifically, Qwest seeks a declaratory order stating that the terms and conditions of Qwest's Iowa Tariff No. 4 apply to the network signaling services provided by Qwest to INS, rather than the terms and conditions of an agreement between Qwest and INS entered into in November of 1997, as amended on May 14, 2001. Qwest states that it believes the agreement to be void and unenforceable.¹

In its petition, Qwest states that it filed revisions to its Iowa Tariff No. 4 on April 9, 2001, to separate certain SS7 signaling charges from its access charges and to add certain "per-call" charges to its signaling services. These changes substantially matched the changes Qwest had made the prior year to its Federal Communications Commission (FCC) tariff for interstate signaling services. The revisions to Qwest's Iowa Tariff No. 4 became effective on May 31, 2001.

¹ "Petition of Qwest Corporation For A Declaratory Order," filed September 8, 2004, at p. 1 (Petition).

On June 13, 2003, Qwest filed another modification to its Iowa Tariff No. 4,² which became effective July 21, 2003. This modification affected the access service provisions in the tariff.

During this same time frame, Qwest was providing signaling services to INS pursuant to a negotiated agreement the parties entered into in November of 1997 and amended on May 14, 2001. The agreement is titled the "Common Channel Signaling Network Interconnection Agreement Switched Access Services" (CCSN Agreement). According to Qwest's petition, the CCSN Agreement and its amendment are applicable only to Iowa.

Qwest states that the CCSN Agreement, as amended, provides that "the only tariff elements that are billed under this agreement are the Entrance Facility Element, the STP Port Element, and the DLT Transport Element."³ According to Qwest's petition, INS has paid the charges for the service elements specified in the CCSN Agreement, but has not paid the per message charges set forth in Iowa Tariff No. 4, as revised. Qwest argues that because the INS CCSN Agreement and its amendment are not consistent with the approved tariff, they are contrary to Iowa Code and public policy and the tariff language should control.

No motions for intervention were filed in this docket. However, similar issues involving the same services and similar agreements have been raised in another docket pending before the Board. The other docket was initiated on March 27, 2003,

² Identified as TF-03-201.

³ Petition, pp. 2-3.

when U.S. Cellular Corporation (USCC), Cox Iowa Telcom, L.L.C. (Cox), and Illuminet, Inc. (Illuminet), (collectively, Complainants) filed a formal complaint against Qwest. The matter is identified as Docket No. FCU-03-24. The complaint involved the same SS7 signaling services as are at issue in this proceeding. Moreover, after Qwest's Iowa Tariff No. 4 was revised on July 21, 2003, Qwest began charging Illuminet pursuant to that tariff for SS7 signaling messages that were generated by USCC and Cox but were transported over Illuminet's SS7 network. The Complainants argue the terms of the interconnection agreements between USCC and Qwest and between Cox and Qwest, rather than the access tariff, should apply. Thus, the services at issue in Docket No. FCU-03-24 are the same and the overall issue of whether the services are being sold pursuant to tariff or agreement is the same.

When the complaint was filed in Docket No. FCU-03-24, the parties expressed an interest in pursuing a negotiated resolution. However, the most recent status reports filed by the parties led the Board to the conclusion that the matter should be set for hearing. On August 5, 2004, the Board issued an "Order Setting Procedural Schedule" establishing dates for filing direct testimony and prehearing briefs and scheduling a hearing for February 23, 2005.

Because the issue presented in this docket is likely to be a material issue in Docket No. FCU-03-24, the Board will decline to grant Qwest's petition for declaratory order. A declaratory order pursuant to Iowa Code § 17A.9 (2003) is issued when a

person requests that the Board determine the applicability of a statute, rule, or order to a specified set of circumstances. Iowa Code § 17A.9(5)(d) provides that an agency may decline to issue a declaratory order. More specifically, 199 IAC 4.9(1) indicates several reasons which would make refusal to issue a declaratory order appropriate, including the following:

4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding that may definitively resolve them.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

The issues raised by Qwest in its petition for declaratory order are substantially similar to the issues being litigated in Docket No. FCU-03-24. In this docket, Qwest is asking the Board to determine that the terms and conditions of its Iowa Tariff No. 4 apply to the provision of network signaling services, rather than the INS CCSN Agreement. In the complaint docket, Qwest is asserting that the terms and conditions of its Iowa Tariff No. 4 apply to the provision of network signaling services, rather than the terms of the USCC and Cox agreements. The similarity of the issues is clear.

Moreover, Qwest has acknowledged the relevance of the INS CCSN Agreement to the USCC and Cox Agreements. On June 6, 2003, Qwest filed the INS CCSN Agreement, as amended, in Docket No. FCU-03-24, stating: "[t]hus, Qwest

considers and is treating the INS CCSN Agreement and Amendment as void and unenforceable, and INS should be subject to all applicable tariffs."⁴ This Qwest filing further demonstrates the connection between this petition and Docket No.

FCU-03-24; clearly Qwest believes its interpretation of the CCSN Agreement is relevant and material to the issues in the complaint docket. Thus, the issues Qwest presents in its Petition are also present in the complaint docket, where they may be definitely resolved.

Based on this analysis, the Board finds that any declaratory order issued in this docket would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner. Because INS did not intervene in this proceeding, the Board does not have the benefit of its arguments and reasoning in this matter, although it also appears any order issued would determine the legal rights, duties, and responsibilities of INS.

For these reasons, the Board will decline to issue a declaratory order in response to Qwest's petition.

⁴ Qwest Petition, p. 3.

IT IS THEREFORE ORDERED:

Pursuant to Iowa Code § 17A.9(5)(d) (2003) and 199 IAC 4.9(1)"4" and 4.9 (1)"9", the Board declines to issue a declaratory order as requested by Qwest Corporation in its petition for declaratory order filed September 8, 2004, in this docket.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 7th day of October, 2004.